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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR: QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Special process on missing persons in the territory of the former Yugoslavia

Report submitted by Mr. Manfred Nowak, member of the Working Group on Enforced or Involuntary Disappearances, pursuant to paragraph 24 of Commission resolution 1994/72

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Introduction

1. During the past three years the people living in the territory of the former Yugoslavia have been suffering the most serious and systematic violations of human rights and humanitarian law in Europe since the Second World War. As a result of the policy of "ethnic cleansing", millions of human beings of various ethnic origins have been forced to leave their homes, hundreds of thousands have been killed and tortured, and tens of thousands have been reported as missing. They disappeared in the course of armed conflict or as targets of "ethnic cleansing" operations, carried out by military or paramilitary forces, by the police or civilians. They left behind their parents, spouses or children, deprived of any information as to whether they are buried in mass graves or still kept in secret detention. After years of searching in vain, living between hope and desperation, families often prefer to have certainty about the death of their relatives rather than to continue to live in that type of uncertainty which arises in the case of a missing person.

2. In the former Yugoslavia, two major situations of missing persons and their relatives have to be distinguished, namely in the Republic of Croatia and in the Republic of Bosnia and Herzegovina. In Croatia, most of the disappearances occurred during the armed conflict between the Yugoslav National Army (JNA) and Croatian forces in the autumn of 1991, most notably in Vukovar after that city was besieged and seized by the JNA and Serbian paramilitary forces. Of the more than 13,000 persons who were originally reported missing in Croatia, many were released in the course of prisoner-of-war exchanges, or their whereabouts have been clarified in other ways. However, the fate of more than 2,700 persons remains unknown, despite numerous attempts to clarify their whereabouts undertaken by their relatives, by associations of family members and other non-governmental organizations, the Croatian Red Cross, the International Committee of the Red Cross (ICRC) and the Government of Croatia.

3. In Bosnia and Herzegovina, the first wave of disappearances occurred during the armed conflict and "ethnic cleansing" operations in the spring and summer of 1992. Since these operations are continuing in many areas of Bosnia and Herzegovina, the number of missing persons continues to rise. Estimates run up to 20,000 persons, but nobody knows the exact size of the tragedy. Owing to the ongoing hostilities, relatives are not well organized, and family members, out of fear of reprisal, often do not dare to submit reports on missing persons. Tracing activities concern both government and de facto authorities and the question of missing persons often plays a role in the political negotiations of the parties involved.

4. Already in his first report to the Commission on Human Rights dated 28 August 1992, the Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia, Mr. Tadeusz Mazowiecki (hereafter referred to as the Special Rapporteur), recommended the establishment of "an investigative commission, under the auspices and in cooperation with the competent United Nations bodies, vested with the task of determining the fate of the thousands of persons who disappeared after the seizure of Vukovar as well as of other persons who disappeared during the conflicts in the

former Yugoslavia" (E/CN.4/1992/S-1/9, para. 67). He added that the Working Group on Enforced or Involuntary Disappearances of the Commission on Human Rights (hereafter referred to as the Working Group) might be called upon to advise and assist in that regard.

5. In fact, already in 1992, more than 11,000 cases of disappearance in the former Yugoslavia were reported to the Working Group by non-governmental organizations. As the Working Group's mandate does not cover international armed conflicts, these cases were not taken into consideration, and the Working Group sought guidance from the Commission at its forty-ninth session as to how to proceed with these cases (E/CN.4/1993/25, para. 36).

6. On 23 February 1993, the Commission on Human Rights adopted resolution 1993/7, entitled "Situation of human rights in the territory of the former Yugoslavia", in paragraph 33 of which it requested the Special Rapporteur, in consultation with the Working Group and ICRC, to develop proposals for a mechanism to address the subject of disappearances in the former Yugoslavia. Accordingly, after respective consultations, in August 1993, a member of the Working Group, Mr. Toine van Dongen, carried out a visit to the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) in order to study the issue and determine which mechanism might be proposed with a view to elucidating the fate and whereabouts of the missing persons.

7. In his report (E/CN.4/1994/26/Add.1), discussed in September 1993 with the Working Group and the Special Rapporteur, Mr. van Dongen proposed the establishment of a "special process on missing persons in the former Yugoslavia", implemented as a joint mandate of the Special Rapporteur and one member of the Working Group, entrusted with the task of dealing with all cases of missing persons in the territory of the former Yugoslavia, regardless of whether the victim was a civilian or a combatant or whether the perpetrators were connected to the Government or not. The proposal to establish a special process was fully endorsed by the Working Group (E/CN.4/1994/26, para. 43) and the Special Rapporteur (E/CN.4/1994/110, para. 208) in their respective reports to the Commission. The Special Rapporteur added his conviction that the United Nations was under an obvious obligation to act more effectively with respect to cases of missing persons in the area.

8. The Commission on Human Rights in paragraph 23 of resolution 1994/39, entitled "Question of enforced disappearances", took note with interest of that proposal. In paragraphs 23 and 24 of resolution 1994/72 on the situation of human rights in the territory of the former Yugoslavia, the Commission urged all parties and, in particular, the Governments of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro), to cooperate in determining the fate of thousands of missing persons by disclosing all information and documentation in order finally to locate such persons and alleviate the suffering of their relatives. Noting in this context the proposal on the special process, it requested the Working Group, represented by one of its members, to cooperate as appropriate with the Special Rapporteur in dealing with that issue. In compliance with this provision, the Chairman of the Working Group nominated Mr. Manfred Nowak, in the capacity of expert, to carry out this task.

9. The present report discusses the mandate and methods of work of the special process, the activities of the expert undertaken during the first half year of his mandate, the situation of missing persons in the Republics of Croatia and Bosnia and Herzegovina on the basis of individual cases he has received and processed, and his conclusions and recommendations as to how to determine in a more efficient manner the fate and the whereabouts of the thousands of missing persons in the territory of the former Yugoslavia.

I. MANDATE AND METHODS OF WORK

10. The special process on missing persons in the territory of the former Yugoslavia is the first special mechanism established by the Commission on Human Rights which is of both a thematic and a country-specific nature. It has been developed as a response to the extraordinary nature, both in qualitative and quantitative terms, of the problem of missing persons in the area. As the Working Group has repeatedly pointed out, its methods of work "are not really geared to handling situations of the size and nature of the one in the former Yugoslavia", and it "could not be expected to devise special working methods to meet the requirements of one particular situation, however important" (E/CN.4/1993/25, paras. 41 and 42).

11. When establishing the special process, the Commission on Human Rights explicitly referred in its resolutions 1994/39 and 1994/72 to the proposal of the Working Group as contained in the report of Mr. van Dongen. The expert, therefore, bases his methods of work on the framework for action recommended by Mr. van Dongen (E/CN.4/1994/26/Add.1, paras. 23-87) and endorsed by the Working Group and the Special Rapporteur.

12. The methods of work follow those of the Working Group and are adapted to the specific needs resulting from the situation in the former Yugoslavia. In summary, the methods of work may be described as follows:

(a) The special process takes a strictly humanitarian, non-accusatory approach with the sole aim of clarifying the fate and whereabouts of missing persons in the territory of the former Yugoslavia;

(b) The special process functions as a channel of communication between the relatives of missing persons or other sources of information and those who may provide information on the whereabouts of missing persons, whether they are allegedly responsible for the situation or not. Its role ends when the fate and whereabouts of the missing person have been clearly established. The expert does not concern himself with the question of determining the responsibility of the alleged perpetrators for the phenomenon of missing persons;

(c) All cases of missing persons in any part of the former Yugoslavia are subject to the special process, i.e. also cases resulting from a situation of armed conflict, both of an international and non-international character. This is a major difference from the working methods of the Working Group, which does not deal with situations of international armed conflict. This difference follows from the complexity of the situation in the former Yugoslavia and was one of the major reasons for establishing the special process;

(d) The target group of the special process is, therefore, much broader than the "disappeared persons" dealt with by the Working Group and defined in the preamble to the Declaration on the Protection of All Persons from Enforced Disappearance (General Assembly resolution 47/33 of 18 December 1992). In particular, not only civilians but also combatants involved in an armed conflict are considered. Therefore, the special process uses the wider term "missing person";

(e) In principle, the special process deals with all cases of missing persons, regardless of whether the perpetrators are in effect connected to government authorities or not. Only cases that are clearly the result of common crime are excluded;

(f) It follows from the general approach of the special process that the expert submits individual cases to both the Government and de facto authorities involved at the national, regional or local levels. In addition, the expert draws on other available sources of information, including national Red Cross Societies and other institutions involved in tracing activities, military authorities, as well as United Nations agencies, such as the Office of the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Protection Force (UNPROFOR). This is another major difference from the methods of the Working Group, which deals exclusively with national Governments. As has been pointed out in Mr. van Dongen's report, in the context of the former Yugoslavia the traditional method of the Working Group would be a "self-defeating approach" (E/CN.4/1994/26/Add.1, para. 74). Contacts with de facto authorities are, of course, of a strictly humanitarian nature and must therefore not be interpreted as implying any kind of official recognition by the United Nations;

(g) In order not to put the relatives of missing persons at risk of reprisals, interlocutors such as associations of family members should, wherever possible, act on behalf of the relatives concerned and, as a rule, the identity of sources remains confidential;

(h) In principle, the minimum elements of information necessary for registering and transmitting individual cases are the same as those required by the Working Group, i.e. the name and other distinguishing criteria of the missing person, date and place of disappearance, forces allegedly held responsible and steps taken to determine the fate or whereabouts of the missing person. In the context of the situation in the former Yugoslavia, these admissibility criteria must, however, be applied in a flexible and pragmatic manner. Tabulated lists of missing persons comprising abbreviated data for each case may be transmitted;

(i) In view of its limited personnel and financial resources, the special process essentially functions as a channel of communication involving database handling and correspondence, leaving the actual tracing and negotiating activities in the field to more experienced organizations such as ICRC and national Red Cross Societies, as well as local, national and international bilateral tracing and exchange commissions existing in this area. As a procedure established by the Commission on Human Rights the

special process is, however, available to provide its good offices whenever requested to do so by the parties involved. It is, therefore, essential that it carry out field visits in order to establish direct contacts with all governmental, intergovernmental and non-governmental institutions concerned, to inform them about the special process and its methods of work, to train interlocutors on how to submit individual cases, to transmit cases directly to those who might provide information and clarification, and to offer other services aimed at establishing the fate and whereabouts of missing persons. As a matter of principle, field visits are only carried out at the invitation of the Governments concerned and the de facto authorities.

13. The special process has been established as a joint mandate of the Special Rapporteur and one member of the Working Group. Upon his appointment, the expert discussed with the Special Rapporteur the modalities of implementing their joint mandate in the most efficient way, taking into account the strictly humanitarian and non-accusatory nature of the special process. They agreed that the expert be entrusted with the task of carrying out the mandate, with responsibility for dealing with the relatives of missing persons and with all governmental, intergovernmental and non-governmental institutions concerned. The Special Rapporteur does not take any active role in implementing the mandate; however, he provides support to the special process. In particular, the field offices of the Centre for Human Rights in the territory of the former Yugoslavia and the staff members servicing the mandate of the Special Rapporteur are at the disposal of the expert. It was further agreed that, after consultation with the Special Rapporteur, the expert will submit his reports on the implementation of the special process directly to the Commission on Human Rights and, if requested, to the General Assembly.

II. ACTIVITIES

A. Consultations

14. Following his appointment, the expert visited Geneva on 31 May and 1 June 1994. During this visit and during his participation in the forty-third and forty-fourth sessions of the Working Group in Geneva (29 August-2 September and 29 November-9 December 1994), he met with the Special Rapporteur to discuss the mandate and methods of work of the special process and held meetings with representatives of the Governments of the Republic of Croatia, the Republic of Bosnia and Herzegovina and the Federal Republic of Yugoslavia (Serbia and Montenegro) in order to introduce the special process, explain the strictly humanitarian nature of the mandate and to initiate cooperation with the Governments concerned. He also held meetings with representatives of UNHCR and ICRC dealing with the former Yugoslavia, with a view to coordinating his activities in tracing missing persons and assuring mutual cooperation. In addition, he exchanged views with representatives of non-governmental organizations and with special rapporteurs of the United Nations active in this field.

15. Already during his first consultations at Geneva, the expert was invited to pay a visit to Croatia and to Bosnia and Herzegovina. His request to visit the Federal Republic of Yugoslavia (Serbia and Montenegro) was, however,

rejected. In a letter dated 24 June 1994, the Permanent Representative of the Federal Republic of Yugoslavia to the United Nations Office at Geneva explained the reasons for his Government's decision as follows:

> "Allow me to inform you that, bearing in mind the present circumstances, and, above all, the mandate of your Working Group, as well as Mr. Mazowiecki's activities so far, that have been highly politically oriented, one-sided, and not based on facts, the Government of the Federal Republic of Yugoslavia is not able to accept your visit to the Federal Republic of Yugoslavia. However, I should like to use this opportunity to reiterate that the Federal Republic of Yugoslavia is interested in and open for cooperation with your Working Group, in accordance with its original mandate, that is, you will agree, exclusively humanitarian, and should not be subject to political manipulations."

16. The expert deeply regrets this negative attitude on the part of the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro). In resolution 1994/72, the Commission on Human Rights urged the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) to cooperate in determining the fate of thousands of missing persons and requested the Working Group on Enforced Involuntary Disappearances, represented by one of its members, to cooperate as appropriate with the Special Rapporteur in dealing with this issue. Similarly, the General Assembly, at its forty-ninth session, adopted resolution 49/196, entitled "The situation of human rights in the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro)", in paragraph 25 of which it urged all parties, and in particular the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro), to cooperate with the special process on missing persons in the territory of the former Yugoslavia established pursuant to paragraph 24 of Commission on Human Rights resolution 1994/72 of 9 March 1994 in determining the fate of thousands of missing persons by disclosing information and documentation on inmates in prisons, camps and other places of detention in order finally to locate such persons and alleviate the suffering of their relatives.

17. The expert can carry out his difficult mandate efficiently only if he receives the full support and cooperation of all Governments involved. As has been stressed repeatedly, and as clearly follows from its methods of work outlined above, the special process is of a strictly humanitarian nature and, in this respect, does not differ at all from the approach of the Working Group. Its only aim is to assist the families in the territory of the former Yugoslavia, irrespective of their ethnic origin, in their efforts to establish the fate and whereabouts of their missing relatives. As long as the special process is not known to the families and all relevant governmental and non-governmental institutions in the Federal Republic of Yugoslavia (Serbia and Montenegro), the expert is unable to provide his assistance to them. He, therefore, expresses his hope that the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) will change its position and will soon invite him to visit Belgrade with a view to establishing direct contacts, introducing the special process to all governmental, intergovernmental and non-governmental institutions concerned and contributing in the difficult task of tracing thousands of missing persons.

B. Visits

18. Upon the invitation of the Governments of the Republic of Croatia and the Republic of Bosnia and Herzegovina, the expert, together with a staff member of the Centre for Human Rights carried out a visit to Zagreb, the United Nations Protected Area (UNPA) Sector East, and to Sarajevo from 3 to 11 July 1994. He wishes to thank both Governments for their availability, hospitality and assistance, notwithstanding the existing difficult situation. He also wishes to thank the United Nations Protection Force (UNPROFOR) for its assistance in arranging the travel plans and providing him with flights to the UNPA Sector East and to Sarajevo. Valuable assistance was also provided by staff members of the field offices of the Centre for Human Rights in Zagreb and Sarajevo.

19. In Zagreb, the expert held meetings with the Deputy Prime Minister and other government officials of the Republic of Croatia, with the President and other members of the governmental Commission for Tracing Missing Persons and Detainees and with the head of the Government Office for Victims of War. He also met with the Executive President of the Croatian Red Cross, with the ICRC Coordinator for the former Yugoslavia and the Chief of Delegation for Croatia, and with the UNHCR chiefs of mission for Croatia and for Bosnia and Herzegovina. Finally, he had extensive consultations with relatives of missing persons and with representatives of the Association of Families of Imprisoned and Missing Defenders of Croatia, the Mothers from Vukovar, the Mothers for Peace, the Serbian Democratic Forum and other non-governmental organizations.

20. Because of logistical problems resulting from the blockade of checkpoints by organizations of Croatian refugees, the visit to UNPA Sector East, in Croatia, had to be considerably shortened. During his short visit to Klisa and Erdut on 8 July 1994, the expert held consultations with representatives of UNPROFOR and UNHCR. His visits to Vukovar and Osijek, and his scheduled meetings with the Presidents of the Croatian and the Serbian Commissions on the Exchange of Prisoners of War and Missing Persons, as well as with relatives of missing persons had, unfortunately, to be postponed.

21. Similar logistical problems were encountered with the UNPROFOR flight to Sarajevo. Consequently, scheduled meetings with representatives of ICRC and of the Bosnian Committee for Human Rights had to be cancelled and the whole programme of the visit to the Republic of Bosnia and Herzegovina adjusted to the shortened period. On 9 and 10 July 1994, the expert held meetings with the Secretary of the Ministry of Foreign Affairs, the Deputy Minister of Justice and other government officials of the Republic of Bosnia and Herzegovina, with the head of the Government Committee for the Exchange of Prisoners, the secretary of the Government Committee for the Investigation of War Crimes, the general manager of the tracing bureau established by the Bosnian Red Cross, and the UNPROFOR Civil Affairs Coordinator for Bosnia and Herzegovina.

C. Communications relating to individual cases of missing persons

22. During his field visits, the expert received allegations concerning a total of more than 30,000 missing persons in the territory of the former Yugoslavia. The President of the Croatian Commission for Tracing Missing Persons and Detainees explained, for instance, that his Commission ha initially registered some 13,700 missing persons, and the head of the Bosnian Committee for the Exchange of Prisoners reported that 17,028 persons were listed as missing in the territory held by Bosnian Serb forces 1/ and that 2,176 persons were reported missing in the territory of Bosnia and Herzegovina previously held by Bosnian Croat forces (HVO). The expert, however, was also informed that many persons initially listed as missing have in the meantime been exchanged as prisoners of war, and that a substantial number of cases had been reported twice.

23. According to the methods of work of the special process, outlined above, allegations on individual cases must contain a number of minimum elements of information in order to be registered and transmitted to Governments or other sources that might provide relevant information. Taking into account the difficulties encountered in the former Yugoslavia, in particular in Bosnia and Herzegovina, in providing timely and relevant information, the expert adopted a pragmatic twofold approach. In principle, only individual cases containing all the necessary information have been registered and transmitted. For this purpose, the relatives and other sources have been provided with forms which have to be filled in for every individual case and which are submitted either directly to the Centre for Human Rights in Geneva or via its field offices in Zagreb and Sarajevo. In order to speed up the tracing activities, the expert also accepted, as a first step, to transmit tabulated lists of missing persons comprising abbreviated data for each case.

24. In Croatia, the expert received from the Commission for Tracing Missing Persons and Detainees a tabulated list of 2,764 cases of missing persons which had been transmitted to the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) and other possible sources of information. At the same time, the Association of Families of Imprisoned and Missing Defenders of Croatia undertook the task of obtaining detailed information from the families of these 2,764 missing persons and of submitting this information on the regular forms of the Working Group. During his visit to Zagreb, a total of 121 cases were personally handed to the expert, and in November 1994 he received another 1,053 cases. Out of these 1,174 cases, a total of 401 were registered and transmitted to the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) and 6 cases were transmitted to the Government of Croatia. In addition, the registered cases and lists of names of missing persons were forwarded to both ICRC and UNHCR. The other cases are in the process of being registered and transmitted.

1/ Wherever the terms "Bosnian Serb forces" or "Bosnian Serb de facto authorities" are used in this report, reference is being made, unless otherwise indicated, only to Bosnian Serbs who are in the military or civilian service of the de facto administration which has its political headquarters at Pale. In particular, no reference is intended or to be implied to any Bosnian Serbs who are loyal to the Republic of Bosnia and Herzegovina.

25. In Bosnia and Herzegovina, it was agreed with the Tracing Bureau of the Bosnian Red Cross that the expert would receive an initial tabulated list of some 3,800 cases of missing persons. In November 1994, the Tracing Bureau submitted a first list of 1,278 names of missing persons. In addition, 223 cases with detailed information have been submitted by relatives, mostly through the Sarajevo field office of the Centre for Human Rights, of which 200 were registered. These 200 cases were transmitted to the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro), to the Bosnian Serb de facto authorities and to other possible sources of information.

26. Up to 16 December 1994 no information concerning the fate or whereabouts of any of the missing persons was received.

III. SITUATION OF MISSING PERSONS

A. Republic of Croatia

27. The cases of disappearance so far reported within the framework of the special process are directly related to the conflict between Croats and Serbs living in Croatia, in particular in the Krajina region, later declared as the United Nations Protected Areas (UNPAs), Sectors South, North, West and East. After Pakrac had declared itself on 28 February 1991 an autonomous region within Croatia (now UNPA-West), and with the intervention of the Yugoslav National Army (JNA) a few days later, the sporadic clashes gradually turned into a full-scale armed conflict. From early May 1991 the JNA also participated actively in the hostilities in Slavonia (now UNPA-East). Fighting in this sector intensified in July 1991 when Serb paramilitary forces, with the aid of JNA, seized Erdut, Dalj and Aljmas. Most widely known is the siege and fall of the city of Vukovar. Beginning in August 1991, Vukovar was for 86 days under heavy shelling and attack by the JNA and Serb paramilitary forces such as Seselj's "White Eagles" and Arkan's "Tigers". On 18 November 1991, after all the neighbouring towns had already been seized, the Croatian National Guard in Vukovar finally surrendered. As has been described in the reports of the Special Rapporteur and of the Commission of Experts established pursuant to Security Council resolution 780 (1992), most gross violations of human rights and humanitarian law resulted from the "ethnic cleansing" operations during and immediately after the seizure of Vukovar and other towns and villages.

28. Of the 2,764 cases of missing persons contained in the tabulated list submitted by the Croatian Commission for Tracing Missing Persons and Detainees, the vast majority of more than 1,800 missing persons were reported from UNPA-East. More than 600 cases allegedly occurred in Sector North, almost 200 cases in Sector West and roughly 100 cases in Sector South.

29. A thorough study of 407 cases of missing persons received from the Association of Families of Imprisoned and Missing Defenders of Croatia and transmitted so far to the Yugoslav and Croatian authorities shows that most of them concern Croats who were detained or abducted by the JNA and Serb paramilitary forces during the seizure of their towns and villages. With the exception of a 2-year-old child, the age of the victims ranges from 20 to 75 years. The majority of the reported victims are men; roughly one sixth are women. Only a few persons of Serbian, Hungarian, Albanian, Ukrainian and

Czech origin have been reported missing and were allegedly abducted or detained by the JNA and Serb paramilitary forces. Except for two cases that reportedly occurred in April and May 1991 all other disappearances took place between July 1991 and February 1992.

30. The vast majority of the cases reported so far occurred in UNPA-East between September and November 1991. In the city of Vukovar, most cases allegedly occurred between 18 and 20 November 1991. Of particular concern is the fate of many patients and medical staff of Vukovar hospital. According to various sources, the director of the hospital and the JNA had agreed on the evacuation of all 420 Croatian patients to the Croatian-held territory, with ICRC and the European Community Monitoring Mission supervising the operation. However, on 20 November 1991, only women, children and the elderly were transported to the Croatian-held territory, while most other patients, in particular soldiers, were allegedly taken to the JNA barracks in Vukovar. Since then, their whereabouts remain unknown. Similarly, in Borovo Naselje, a suburb of Vukovar, the missing persons were reportedly abducted from the field hospital "Borovo Commerce".

31. Also in UNPA-North, notably in Dubica, Bacin, Glina and Petrinja, most of the cases reported so far occurred between September and November 1991. Various sources reported that during the occupation of Dubica, all ethnic Croats were convened on 20 November 1991 to the local school, from where they were transported to a detention centre in Glina. Since then, their whereabouts remain unknown. Other cases of missing persons are reported to have occurred in UNPA-West, notably in Antunovac, and in UNPA-South, in particular in Knin and Skabrnje.

32. Among the missing persons reported so far are six ethnic Serbs who were allegedly arrested by the Croatian Military Police between July and December 1991. According to the sources, one of these arrests took place in Nova Gradiska (Croatian territory, east of UNPA-West), the others in Zagreb, Bjelovar (Croatian territory between Zagreb and UNPA-West) and Slavonski Brod (Croatian territory between UNPA-West and UNPA-East).

33. Very little information has been received about the whereabouts of missing persons after their arrest or abduction. Some of the victims allegedly detained by the JNA or Serb paramilitary forces are reported to have been seen later in detention centres in the UNPAs, such as Glina (Sector North), Dalj, north of Vukovar, or the Velepromet warehouse in Vukovar (Sector East). Others were reportedly deported to the Federal Republic of Yugoslavia (Serbia and Montenegro) and last seen in late 1991 or early 1992 in detention camps such as Sremska Mitrovica (near the border with Croatia), Nis and in the mines of Aleksinac (in Serbia, north-east of Kosovo).

34. The bodies of a large number of both civilians and military personnel killed in connection with the armed conflict in Croatia are believed to have been buried in mass graves in various locations, mainly in UNPA-East. The majority of these persons were allegedly killed in mass executions in and around Vukovar in November 1991. On 31 March 1994, the Commission of Experts established pursuant to Security Council resolution 780 (1992) received information identifying 180 mass grave sites in the whole of the former Yugoslavia. Forty-four of these sites are located in Croatia. According to

various sources, a considerable number of Croats abducted in Vukovar, in particular patients and medical staff of Vukovar hospital, were shot and were buried in a mass grave at Ovcara, some 6 km south-east of Vukovar. As the Commission of Experts did not succeed in its attempts to excavate the Ovcara mass grave due to, inter alia, opposition from the Serb de facto authorities, including the Parliament of the "Serb Republic of Krajina" (S/1994/674, paras. 265-276), it has not yet been possible to verify these allegations. In October and November 1993 the Commission of Experts deployed forensic teams to carry out preliminary investigations near Poljana Pakracka (UNPA-West) in order to confirm the existence of a mass grave, said to contain the remains of up to 1,700 persons. As a result of these investigations 19 bodies were exhumed from 9 separate graves. Forensic examination of the corpses confirmed that the persons had indeed been executed. Most of the bodies had their hands tied together and exhibited multiple bullet-wounds to the head and other parts of the body. Since the objective of this preliminary investigation was merely to establish the existence and location of the grave site, no attempt was made to identify any of the bodies.

35. It is to be noted that the Joint Commission to Trace Missing Persons and Mortal Remains established on 16 December 1991 by the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) and chaired by ICRC has been at a standstill since July 1992. The recently established Joint Commission of Governments of the two countries for the questions of missing persons, refugees and displaced persons met only once, during the visit of the Yugoslav Deputy Prime Minister to Zagreb on 12 February 1994, and since then there has been no follow-up on its mandate.

B. Republic of Bosnia and Herzegovina

36. As in Croatia, the widespread phenomenon of missing persons is a direct result of the armed conflict and of the policy of "ethnic cleansing" in many areas of Bosnia and Herzegovina, in particular in the territory under the control of Bosnian Serb de facto authorities. The armed conflict broke out soon after the Republic of Bosnia and Herzegovina declared its independence, on 3 March 1992. On 7 April 1992, the Serbian Democratic Party declared the independence of the so-called "Serbian Republic of Bosnia and Herzegovina". From this period fierce fighting flared up and escalated in many parts of the country. The JNA and Serb paramilitary units took control of large territories, while agreements on cease-fires were invariably violated. Fighting broke out on 1 April 1992 in Bijeljina in north-eastern Bosnia and intensified in the southern municipalities of Mostar, Neum and Kupres. From Bijeljina the fighting spread southwards along the Drina river, which forms the border with the Federal Republic of Yugoslavia (Serbia and Montenegro), to Zvornik, Visegrad and Foca. According to reliable sources, by the end of the summer at least 300,000,Muslims had been "cleansed" from the eastern part of the country. Up to 40,000 people are believed to have been killed in this operation alone. In the period from May to July 1992 a similar fate hit the predominantly Muslim inhabitants of the area in and around Prijedor in western Bosnia, where thousands of civilians were reportedly killed, thousands sent to concentration camps, and even larger numbers deported.

37. Since the beginning of the conflict, a systematic pattern of gross and reliably attested violations of human rights and humanitarian law has been established as can be seen, inter alia, from the 14 reports submitted so far by the Special Rapporteur (the latest to the General Assembly is dated 4 November 1994) and from the reports of the Commission of Experts established pursuant to Security Council resolution 780 (1992), the latest being contained in the annex to document S/1994/674.

38. As a result of the rapid escalation of the conflict between Government forces and Bosnian Serb troops in the Bihac enclave in late October 1994, thousands of civilians were displaced and many families torn apart. The number of people who were killed or went missing under these chaotic circumstances is impossible to estimate. It is further believed that both sides to the conflict have taken a large number of prisoners of war. With intense fighting still going on in the Bihac pocket, nothing is known about their fate or whereabouts.

39. The number of missing persons alleged in Bosnia and Herzegovina runs to 20,000. Until 16 December 1994, only 223 cases with detailed information have been submitted by relatives to the special process, of which 200 were registered. Most of these cases concern Muslim men between 25 and 60 years of age who were detained or abducted in Bosnia and Herzegovina between April and November 1992. A few cases were reported to have occurred in the western region, but no cases from other parts of the country have been received. To date, only one Croat was reported arrested by the Bosnian forces and two Serbs were allegedly detained by the Bosnian police.

40. An analysis of the cases shows that the JNA was mainly mentioned by the sources as the force responsible, even in cases which occurred after its official withdrawal from Bosnia and Herzegovina on 19 May 1992. Serb paramilitary groups such as Arkan's "Tigers", Seselj's "White Eagles" and "Marticeva" forces, as well as Serb neighbours of the missing people, were also held responsible for the abductions. Furthermore, subsequent to their abduction, the victims were allegedly transported to detention camps in order either to be exchanged against Serb prisoners or to be sent to forced labour assignments. In this respect, Jagomir hospital in Sarajevo, the bunker camp in Vogosca (north of Sarajevo) and "Pelemis" in Vlasenica (north-east of Sarajevo) were mentioned as regular detention camps where missing persons were last seen. Moreover, in a considerable number of cases, sources reported that the missing persons were deported to the mines of Aleksinac, north-east of Kosovo in the Federal Republic of Yugoslavia (Serbia and Montenegro), to undertake forced labour.

41. Mass abductions from other localities were also reported. According to sources, 22 persons were abducted in May 1992 by the JNA from Ilidza near Sarajevo. In Rogatica (east of Sarajevo) 12 Muslims were allegedly abducted by their Serb neighbours in June 1992, and their whereabouts remain unknown. Another reported incident was an attack on the village of Ahatovici (near Sarajevo) by a paramilitary group, during which 56 men were abducted. A source also reported that 10 persons from Babljak Rogatica (east of Sarajevo) were arrested by the JNA. They were first detained in Borike (near Rogatica) and later allegedly transferred to Aleksinac to work in the mines. A considerable number of disappearances were reported from the town of

Novoseoci-Sokolac (north-east of Sarajevo) relating to the fact that on 22 September 1992 all Muslim inhabitants were allegedly gathered up by Serb paramilitary forces, and that women and children were then taken to Hreso (in the vicinity of Sarajevo). No information is available on the whereabouts of the men.

42. With respect to cases received from the western region of the country, it was reported that in November 1992 four Muslims were abducted from a wood near Kotor Varos (north-western Bosnia) and were later transported to a camp in Grabovica (also in north-western Bosnia). It was further alleged that in May 1992, six persons were arrested at their home in Prijedor by the local police with the aid of the paramilitary. They were detained at "Impro", a firm located in the same street as their residence. Several of the cases allegedly occurred in Sanski Most and Kotor Varos (north-western Bosnia) and one case was reported to have occurred in Brcko (north-eastern Bosnia).

43. The establishment of the Federation of Bosnia and Herzegovina after the Washington agreement of 18 March 1994 has brought new stability to relations between the Government and the Bosnian Croats. It is to be hoped that within the framework of this Federation the parties will be able to overcome past animosities and enter a process of normalization. The agreement also allows for increased freedom of movement, which in turn will enhance the prospects for determining the fate and whereabouts of persons who have gone missing during the conflict in Bosnia and Herzegovina. An encouraging step towards a solution of this problem was taken when, following the peace settlement between the Government and the Bosnian Croats, the two parties agreed to release and exchange their prisoners of war. This prisoner exchange was completed in May 1994 and each side now allegedly holds only three prisoners, who are charged with having committed serious crimes during the conflict.

IV. CONCLUSIONS AND RECOMMENDATIONS

44. Since the special process on missing persons in the territory of the former Yugoslavia has been operating only for about half a year, relatively few individual cases of missing persons have so far been received, registered and transmitted. The following conclusions which are primarily based on an analysis of these roughly 600 cases, are therefore of a preliminary nature only. While these cases may be representative of the situation in Croatia, this is definitely not true for Bosnia and Herzegovina. For instance, no cases have so far been reported from the southern part of the country, and only a few from the western region. Most individual cases date back to events which occurred in 1992, although various reports indicate that disappearances continue to take place. Finally, only eight missing persons of Serbian origin have been reported to the expert. This fact might be explained, inter alia, by the unwillingness of the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) to cooperate with the expert and to make the special process better known to the family members of missing persons.

45. Although the mandate of the special process is broad enough to cover also combatants who are missing as a direct result of armed confrontations, a first analysis of the individual cases processed so far leads to the conclusion that most of the allegations can be classified as enforced disappearances in the narrow sense of the 1992 Declaration on the Protection of All Persons from

Enforced Disappearance (hereafter referred to as the Declaration). In the preambular part of resolution 47/133, in which the General Assembly proclaimed the Declaration, enforced disappearances are defined "in the sense that persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, thereby placing such persons outside the protection of the law".

46. According to the allegations in relation to individual cases in Croatia as well as in Bosnia and Herzegovina, most victims were civilians who were detained or abducted by military or paramilitary forces during or shortly after the seizure of their towns or villages. Many of them were suspected to be in detention centres in the territories controlled by the Bosnian Serb de facto authorities or in the so-called "Republic of Serbian Krajina", or were deported to the territory of the Federal Republic of Yugoslavia (Serbia and Montenegro).

47. According to the sources, the JNA and Serb paramilitary forces such as Arkan's "Tigers", Seselj's "White Eagles" and "Marticeva forces" were in most cases allegedly responsible for the detentions and abductions. Even if the majority of the disappearances were actually carried out by paramilitary forces, these groups reportedly acted with the direct or indirect support and consent of the JNA. The Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) is, therefore, allegedly responsible for most disappearances that occurred in Croatia, as well as for most disappearances in Bosnia and Herzegovina until 19 May 1992, the date of the JNA's official withdrawal. However, the Government of the Federal Republic of Yugoslavia, in its letter to the expert dated 24 June 1994 stated that "in the case of the Federal Republic of Yugoslavia the problem of missing persons exists only in relation to Croatia". After the withdrawal of the JNA from Bosnia and Herzegovina, the Bosnian Serb de facto authorities are held responsible by the sources for most detentions and abductions reported to the expert. These cases, therefore, fall outside the definition of disappearances under the Declaration. They are, however, covered by the mandate of the special process.

48. Most of the missing persons reported from Croatia are Croats, most of the missing persons reported from Bosnia and Herzegovina are Muslims. Taking into account that the JNA and Serb paramilitary forces are allegedly responsible, these are strong indications that most missing persons reported so far are victims of "ethnic cleansing" operations.

49. In Croatia, the practice of disappearances allegedly stopped with the agreement on a cease-fire and the termination of the armed conflict. The number of persons reportedly still missing has declined to less than 3,000, most of them Croats. Although the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) claimed that some 1,000 Serbs were missing in Croatia, no individual cases were submitted to the expert by the Yugoslav authorities. The six persons of Serbian origin reported missing in Croatia were allegedly detained by the Croatian military police. Their cases were

submitted by Croatian non-governmental sources. A considerable number of missing persons of Croatian origin were allegedly deported to the Federal Republic of Yugoslavia (Serbia and Montenegro) to undertake forced labour. The existence of mass graves could be the result of massive summary executions, victims of which might have been reported to the expert as missing persons. The Joint Commission of Governments for the Questions of Missing Persons, Refugees and Displaced Persons and for Humanitarian Affairs, established by the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Republic of Croatia to trace missing persons was of no avail.

50. In Bosnia and Herzegovina, the number of missing persons allegedly continues to rise. Most of the cases submitted to the expert concern Muslims who are reported to have been detained in 1992 by the JNA, by Bosnian Serb de facto authorities or by Serb paramilitary forces. According to the sources, many of them could still be held in detention, either in the territory of Bosnia and Herzegovina controlled by Bosnian Serb de facto authorities, or in the Federal Republic of Yugoslavia (Serbia and Montenegro).

51. Under articles 3, 13 and 14 of the Declaration, all States bear the responsibility of taking effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance, of investigating thoroughly all alleged cases of disappearances and of bringing the perpetrators to justice. The following recommendations are based on these responsibilities, which are either directly applicable (acts of enforced disappearance attributable to Governments) or which are applied by analogy to reported cases of missing persons for which de facto authorities are allegedly responsible.

52. The Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) is urged to cooperate with the special process and to invite the expert to carry out a visit with a view to introducing the special process to all governmental, intergovernmental and non-governmental organizations concerned. Furthermore, the expert wishes to remind the Yugoslav authorities of their responsibility under the Declaration to investigate all cases of enforced disappearances in which the JNA or paramilitary forces under the control of the JNA were allegedly involved. These cases concern alleged disappearances in Croatia, as well as those having occurred in Bosnia and Herzegovina, until 19 May 1992. In addition, the Yugoslav authorities are under an obligation to bring to justice all persons under their jurisdiction who are presumed responsible for an act of enforced disappearance. Finally, the Yugoslav authorities are requested to provide their good offices for the purpose of tracing missing persons allegedly held by the Serb de facto authorities in Croatia and Bosnia and Herzegovina.

53. The Government of the Republic of Croatia is requested to continue cooperating with the special process. In particular, the expert wishes to remind the Croatian authorities of their responsibility under the Declaration to investigate thoroughly the six cases of Serbs who were allegedly arrested by the Croatian Military Police and to bring the perpetrators to justice. In addition, the Croatian authorities are requested to provide their good offices for the purpose of tracing missing persons from Bosnia and Herzegovina.

54. The Government of the Republic of Bosnia and Herzegovina is requested to continue cooperating with the special process. In particular, the expert wishes to draw the attention of the Bosnian authorities to their responsibility under the Declaration to investigate thoroughly the two cases of missing Serbs for whom the Government of Bosnia and Herzegovina is allegedly responsible. They are also requested to make the special process better known among the people under its jurisdiction and to assist relatives of missing persons in submitting cases to the expert.

55. The Serb de facto authorities in Bosnia and Herzegovina are urged to stop the practice of "ethnic cleansing" and similar acts which might cause the disappearance of persons under their control. They are also urged to take all necessary measures to prevent such acts, to investigate thoroughly all cases of missing persons which allegedly occurred either in the territory under their control or for which the forces under their control are reported to be responsible, and to bring the perpetrators to justice.

56. The Serb de facto authorities in Croatia are urged to investigate thoroughly all cases of missing persons that allegedly have occurred in the territory under their control or for which forces under their control are reported to be responsible, and to bring the perpetrators to justice. In particular, they are requested to cooperate in the excavation of mass graves in the territory under their control such as Ovcara.

57. ICRC, national Red Cross Societies and United Nations bodies concerned such as UNHCR and UNPROFOR, are requested to continue their cooperation with the special process.

58. All parties involved in armed conflicts are urged to take all measures necessary to prevent or terminate acts which may result in cases of missing persons. In particular, they are requested to include in cease-fire agreements and peace treaties explicit provisions which guarantee that alleged cases of missing persons are thoroughly investigated. Independent bodies should be established to monitor compliance with such agreements.

59. As experience in other countries shows, the investigation and clarification of the fate and whereabouts of missing persons is a precondition for a process of reconciliation that might lead to a lasting peace based on justice and respect for human rights. Associations of families and relatives of missing persons and other non-governmental organizations might play a crucial role in initiating such a process of reconciliation by actively cooperating with similar organizations in other parts of the former Yugoslavia. Most important, for the time being, is, however, the political will of Governments and de facto authorities to terminate the hostilities and to conduct thorough investigations concerning all cases of missing persons. The expert will stay available to provide his good offices whenever requested to do so by the parties concerned.

Annex

MAP OF
THE REPUBLIC OF CROATIA AND
THE REPUBLIC OF BOSNIA AND HERZEGOVINA

The boundaries and names shown on this map do not imply official endorsement or acceptance by the United Nations.